

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ANTHONY GRAZIA,

11 Plaintiff,

v.

12 SAFECO INSURANCE COMPANY OF
13 ILLINOIS, a foreign corporation,

14 Defendant.

CASE NO. C17-1130-JCC

ORDER ON MOTION TO
REMAND

15 This matter comes before the Court on Plaintiff's motion to remand (Dkt. No. 8). Having
16 thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument
17 unnecessary and hereby GRANTS the motion for the reasons explained herein.
18

I. BACKGROUND

20 On November 17, 2013, Plaintiff Anthony Grazia was in a car accident resulting in
21 significant injuries. (Dkt. Nos. 1 at 11, 5-9.) He brought suit against the negligent driver, Vallen
22 Brewer, in a prior action, which resolved for Brewer's insurance limit. (Dkt. No. 9-3 at 3.)
23 Plaintiff then filed a claim for underinsured motorist benefits with his insurer, Safeco. In
24 November 2016, Plaintiff filed a complaint in King County Superior Court against Safeco
25 disputing the company's handling of his claim and asserting that it acted in bad faith. (Dkt. No.
26 12.) On July 26, 2017, Safeco removed the case to federal court on the basis of diversity

1 jurisdiction. (Dkt. No. 1 at 4.) Safeco states it was first put on notice that the amount in
2 controversy was sufficient for federal jurisdiction by Plaintiff's June 27, 2017 settlement demand
3 letter. (Dkt. No. 1 at 6, 20.) Plaintiff disputes this assertion, claiming Safeco had notice that the
4 amount in controversy exceeded statutory requirements for removal more than 30 days prior to
5 removal, and thus removal was not timely under 28 U.S.C. § 1446(b). (Dkt. No. 8 at 4.) Plaintiff
6 now moves to remand to state court and for an award of attorney fees on the basis that removal
7 was not "fairly supportable." (Dkt. No. 8.)

8 **II. DISCUSSION**

9 **A. Legal Standard**

10 A party to a civil action brought in state court may remove that action to federal court if
11 the district court would have had original jurisdiction at the time the action was commenced and
12 removed. *See* 28 U.S.C. § 1441(a); 14B Charles Alan Wright & Arthur R. Miller, Federal
13 Practice and Procedure § 3723 (4th ed. 2013). Where a case is not removable as initially pled, it
14 may still be removed "within 30 days after receipt by the defendant, through service or otherwise
15 of a copy of an amended pleading, motion, order, or other paper from which it may first be
16 ascertained that the case is one which is or has become removable." 28 U.S.C. § 1446(b)(3).

17 Once removed, a case can be remanded to state court for defects in the removal procedure
18 or lack of subject matter jurisdiction. *See* 28 U.S.C. § 1447(c). There is a "strong presumption"
19 against removal, and federal jurisdiction "must be rejected if there is any doubt as to the right of
20 removal in the first instance." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

21 **B. Defendant's Notice of Removal was Untimely**

22 Neither party challenges the federal court's subject matter jurisdiction. Rather, the Court
23 finds that removal was untimely. The thirty-day clock for removal started upon Defendant's
24 March 31, 2017 receipt of Plaintiff's interrogatory answers, but the case was not removed until
25 July 26, 2017. (*See* Dkt. Nos. 8 at 5, 1 at 4.) Coupled with information already in Defendant's
26 possession, this "other paper" was sufficient for Defendant to ascertain that the amount in

1 controversy would exceed the jurisdictional requirement for removal.

2 Plaintiff's interrogatory answers constitute "other paper" within the meaning of section
3 1446(b)(3). *See* 28 U.S.C. § 1446(b)(3). Courts have held that "other paper" refers to notice in
4 writing and does not have to be a formal court filing. *Stramel v. GE Capital Small Business*
5 *Finance Corp.*, 955 F. Supp. 65, 67–68 (E.D. Tex. 1997) ("actual notice may be communicated
6 in a formal or informal manner"); *see also Rynearson v. Motor City, Inc.*, 626 F. Supp. 2d 1093,
7 1097 (W.D. Wash. 2009). From this "other paper," Defendant could ascertain that the case was
8 removable. Defendant argues that under the standard established in *Harris v. Bankers Life and*
9 *Casualty Company*, Plaintiff's claims were not clearly removable on the face of interrogatory
10 answers. 425 F. 3d 689 (9th Cir. 2005). However, this Court joins other courts in this district in
11 declining to extend *Harris*, a case involving a defendant's subjective knowledge and duty to
12 investigate diversity of citizenship, to a case regarding amount in controversy, where "a
13 defendant in the exercise of diligence could readily ascertain, on the basis of information within
14 its . . . possession, that the amount in controversy exceeds the jurisdictional minimum." *See*
15 *Banta v. American Medical Response Inc.*, No. 11-3586, slip op. at 2 (C.D. Ca. July 15, 2011).

16 Defendant had information in its possession that gave it reason to know that the amount
17 in controversy would be over \$75,000. First, Plaintiff's interrogatory responses informed
18 Defendant that he would claim damages arising from "continued symptoms of brain injury,"
19 prior and continued medical treatment, and past and future wage loss of a six-figure annual
20 income. (Dkt. Nos. 9-5 at 2–3, 8 at 6, 12 at 2.) Although Plaintiff's medical bills and future loss
21 of earnings estimate had "not yet been itemized" or "finalized," his responses indicate
22 significant, long-term damages. (*See* Dkt. Nos. 10 at 2, 9-5 at 2 – 3.) Additionally, Plaintiff's
23 complaint indicates he is claiming damages for past and future medical expenses, pain and
24 suffering damages, and lost wages and earning capacity. (Dkt. No. 1-1 at 2.) This court finds it
25 difficult to believe that upon receipt of Plaintiff's interrogatory responses, Safeco, a sophisticated
26 insurance company, "believed the amount of damages sought was less than \$75,000." *See Bush*

v. Winn Dixie Montgomery, LLC, 132 F. Supp. 3d 1317, 1318 (N.D. Ala. 2015) (holding that the nature of damages alleged was sufficient to put defendant on notice of the amount in controversy without a numeric claim of damages).

C. Defendant Had an Objectively Reasonable Basis for Removal

If a case is remanded, attorney fees and costs are recoverable pursuant to 28 U.S.C. § 1447(c) only if the removing party “lacked an objectively reasonable basis for seeking removal.” *Martin v. Franklin Capitol Corp.*, 546 U.S. 132, 141 (2005). Although the Court finds Defendant’s removal untimely, it was not so objectively unreasonable as to merit an award of attorney fees and costs.

10 | III. CONCLUSION

11 For the foregoing reasons, Plaintiff's motion for remand is GRANTED and motion for
12 attorney fees and costs is DENIED (Dkt. No. 8).

13 DATED this 25th day of October 2017.

Joh C Coyne

John C. Coughenour
UNITED STATES DISTRICT JUDGE